

HOUSE BILL No. 1568

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-7.5-1; IC 20-17.

Synopsis: Collective bargaining for school employees. Allows noncertificated school employees to engage in collective bargaining. Provides for disciplinary procedures for noncertificated employees of a school corporation. Provides certain procedural requirements before a noncertificated employee of a school corporation may be discharged.

Effective: July 1, 2003.

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January 16, 2003, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1568

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-7.5-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. ~~Intent~~. The Indiana
3 general assembly ~~hereby~~ declares that:

4 ~~(a)~~ (1) the citizens of Indiana have a fundamental interest in the
5 development of harmonious and cooperative relationships
6 between school corporations and their ~~certificated~~ employees;

7 ~~(b)~~ (2) recognition by school employers of the right of school
8 employees to organize and acceptance of the principle and
9 procedure of collective bargaining between school employers and
10 school employee organizations can alleviate various forms of
11 strife and unrest;

12 ~~(c)~~ (3) the state has a basic obligation to protect the public by
13 attempting to prevent any material interference with the normal
14 public school educational process; **and**

15 ~~(d)~~ (4) the relationship between school corporation employers and
16 ~~certificated~~ school employees is not comparable to the ~~relation~~
17 **relationship** between private employers and employees among

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others for the following reasons:

(i) (A) A public school corporation is not operated for profit but to ~~insure~~ **ensure** the citizens of the state rights guaranteed them by the ~~Indiana State~~ **Constitution of the State of Indiana**.

(ii) (B) The obligation to educate children and the methods by which such education is effected will change rapidly with increasing technology, the needs of an advancing civilization, and requirements for substantial educational innovation.

(iii) (C) The Indiana general assembly has delegated the discretion to carry out this changing and innovative educational function to the local governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation which these bodies may not and should not bargain away. ~~and~~:

(iv) (D) Public school corporations have different obligations with respect to ~~certificated~~ school employees under constitutional and statutory requirements than private employers have to their employees.

SECTION 2. IC 20-7.5-1-2, AS AMENDED BY P.L.100-2001, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. As used in this chapter:

(a) "School corporation" means any local public school corporation established under Indiana law and, in the case of public vocational schools or schools for children with disabilities established or maintained by two (2) or more school corporations, shall refer to such schools.

(b) "Governing body" means:

(1) the board or commission charged by law with the responsibility of administering the affairs of the school corporation; or

(2) the body that administers a charter school established under IC 20-5.5.

(c) "School employer" means:

(1) the governing body of each:

(A) school corporation; or

(B) charter school established under IC 20-5.5; and

(2) any person or persons authorized to act for the governing body of the school employer in dealing with its employees.

(d) "Superintendent" shall mean:

(1) the chief administrative officer of any:

(A) school corporation; or



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- 1 (B) charter school established under IC 20-5.5; or
 2 (2) any person or persons designated by the officer or by the
 3 governing body to act in the officer's behalf in dealing with school
 4 employees.
- 5 (e) "School employee" means any full-time ~~certificated~~ person in the
 6 employment of the school employer. A school employee shall be
 7 considered full time even though the employee does not work during
 8 school vacation periods, and accordingly works less than a full year.
 9 There shall be excluded from the meaning of school employee
 10 supervisors, confidential employees, **and** employees performing
 11 security work. ~~and noncertificated employees.~~
- 12 (f) "Certificated employee" means a person:
 13 (1) whose contract with the school corporation requires that the
 14 person hold a license or permit from the **Indiana** state board of
 15 education or a commission thereof as provided in IC 20-6.1; or
 16 (2) who is employed as a teacher by a charter school established
 17 under IC 20-5.5.
- 18 (g) "Noncertificated employee" means any school employee whose
 19 employment is not dependent upon the holding of a license or permit
 20 as provided in IC 20-6.1.
- 21 (h) "Supervisor" means any individual who has:
 22 (1) authority, acting for the school corporation, to hire, transfer,
 23 suspend, lay off, recall, promote, discharge, assign, reward, or
 24 discipline school employees;
 25 (2) responsibility to direct school employees and adjust their
 26 grievances; or
 27 (3) responsibility to effectively recommend the action described
 28 in subdivisions (1) through (2);
 29 that is not of a merely routine or clerical nature but requires the use of
 30 independent judgment. The term includes superintendents, assistant
 31 superintendents, business managers and supervisors, directors with
 32 school corporation-wide responsibilities, principals and vice principals,
 33 and department heads who have responsibility for evaluating teachers.
- 34 (i) "Confidential employee" means a school employee whose
 35 unrestricted access to confidential personnel files or whose functional
 36 responsibilities or knowledge in connection with the issues involved in
 37 dealings between the school corporation and its employees would make
 38 the confidential employee's membership in a school employee
 39 organization incompatible with the employee's official duties.
- 40 (j) ~~"Employees"~~ **"Employee performing security work"** means any
 41 school employee whose primary responsibility is the protection of
 42 personal and real property owned or leased by the school corporation

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or who performs police or quasi-police powers.

(k) "School employee organization" means:

(1) for certificated employees, any organization which has school employees as members and one (1) of whose primary purposes is representing school employees in dealing with their school employer; **and**

(2) for noncertificated employees, an organization that has school employees as members;

and includes any person or persons authorized to act on behalf of such organizations.

(l) "Exclusive representative" means the school employee organization which has been certified for the purposes of this chapter by the board or recognized by a school employer as the exclusive representative of the employees in an appropriate unit as provided in section 10 of this chapter, or the person or persons duly authorized to act on behalf of such representative.

(m) "Board" means the Indiana education employment relations board provided by this chapter.

(n) "Bargain collectively" means the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith with respect to items enumerated in section 4 of this chapter and to execute a written contract incorporating any agreement relating to such matters. Such obligation shall not include the final approval of any contract concerning these or any other items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other.

(o) "Discuss" means the performance of the mutual obligation of the school corporation through its superintendent and the exclusive representative to meet at reasonable times to discuss, to provide meaningful input, **and** to exchange points of view, with respect to items enumerated in section 5 of this chapter. This obligation shall not, however, require either party to enter into a contract, to agree to a proposal, or to require the making of a concession. A failure to reach an agreement on any matter of discussion shall not require the use of any part of the impasse procedure, as provided in section 13 of this chapter. Neither the obligation to bargain collectively nor to discuss any matter shall prevent any school employee from petitioning the school employer, the governing body, or the superintendent for a

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redress of the employee's grievances either individually or through the exclusive representative, nor shall either such obligation prevent the school employer or the superintendent from conferring with any citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation.

(p) "Strike" means concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, without the lawful approval of the school employer, or in any concerted manner interfering with the operation of the school employer for any purpose.

(q) "Deficit financing" with respect to any budget year shall mean expenditures in excess of money legally available to the employer.

SECTION 3. IC 20-7.5-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A school employer shall discuss with the exclusive representative of certificated employees and may but shall not be required to bargain collectively, negotiate, or enter into a written contract concerning or be subject to or enter into impasse procedures on the following matters:

- (1) Working conditions, other than those provided in section 4 of this chapter.
- (2) Curriculum development and revision.
- (3) Textbook selection.
- (4) Teaching methods.
- (5) Hiring, promotion, demotion, transfer, assignment, and retention of certificated employees, and changes to any of the requirements set forth in IC 20-6.1-4.
- (6) Student discipline.
- (7) Expulsion or supervision of students.
- (8) Pupil-teacher ratio.
- (9) Class size or budget appropriations.

However, any items included in the 1972-1973 agreements between any employer school corporation and the employee organization shall continue to be bargainable.

(b) A school employer shall discuss with the exclusive representative of noncertificated employees and may (but is not required to) bargain collectively, negotiate, be subject to, or enter into impasse procedures, or enter into a written contract concerning the following matters:

- (1) Working conditions, other than those provided in section 4 of this chapter.**
- (2) Selection, assignment, or promotion of personnel.**

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Any items included in the 2001-2002 agreements between an employer school corporation and an employee organization continue to be bargainable.

(c) Nothing shall prevent a superintendent or his designee from making recommendations to the school employer.

(d) This chapter may not be construed to limit the rights of the school employer and the exclusive representative to mutually agree to the matters authorized under IC 20-6.1-4-14.5.

SECTION 4. IC 20-17 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

ARTICLE 17. EMPLOYMENT PROTECTION FOR EDUCATIONAL EMPLOYEES

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Board" refers to the Indiana education employment relations board established by IC 20-7.5-1-9.

Sec. 3. "Classification seniority" means the length of the most recent continuous service in an employee's classification with a single employer.

Sec. 4. "Employee" refers to a noncertificated employee (as defined in IC 20-7.5-1-2(g)) of a school corporation.

Sec. 5. "Employer" means a school employer (as defined in IC 20-7.5-1-2(c)).

Sec. 6. "Just cause", as the term pertains to the discipline of employees, includes any of the following:

(1) Falsification of an employment application to obtain employment through subterfuge.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Unsatisfactory attendance, if the employee is unable to show cause for the employee's absences or tardiness.

(4) Damaging the employer's property through willful negligence.

(5) Refusing to obey lawful instructions.

(6) Reporting to work under the influence of alcohol in a state of intoxication or a controlled substance (as set forth in IC 35-48-2), consuming alcohol or a controlled substance on the employer's premises or while operating the employer's vehicles, or while driving a commercial motor vehicle committing a disqualifying offense under IC 9-24-6-8.

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(7) Conduct endangering the safety of the employee or any other employee.

(8) Any breach of a duty in connection with the employee's employment that is reasonably owed the employer by an employee.

(9) Conduct endangering the safety of students.

(10) Commission of child molesting (IC 35-42-4-3), child exploitation (IC 35-42-4-4), vicarious sexual gratification (IC 35-42-4-5), child solicitation (IC 35-42-4-6), child seduction (IC 35-42-4-7), or sexual misconduct with a minor (IC 35-42-4-9).

Sec. 7. "School corporation" has the meaning set forth in IC 20-7.5-1-2(a).

Chapter 2. Classification

Sec. 1. An employee may not attain classification seniority until completion of a probationary period of thirty (30) days, at which time classification seniority relates back to the employee's date of hire.

Sec. 2. If a permanent or prolonged reduction within any classification of employees is determined necessary by an employer, classification seniority shall be the determining factor in making the reduction and any subsequent recall from reduction.

Chapter 3. Representation

Sec. 1. An employee is entitled to representation by an employee organization or legal counsel, or both, during any proceeding under this article.

Chapter 4. Discipline and Discharge of Employees

Sec. 1. An employee may be disciplined before suspension or discharge only for just cause as enumerated in IC 20-17-1-6(1) through IC 20-17-1-6(8) and must be:

(1) informed in writing of all details of any offense or violation:

(A) with which the employee is charged; and

(B) that would constitute just cause for discipline; and

(2) given a reasonable time to correct the behavior constituting the identified offense or violation described in clause (A).

Sec. 2. A discharge may not take effect unless, at least ten (10) days before the effective date of the discharge, the employer:

(1) provides the employee with written notice of all offenses or violations for which the employee is being discharged; and

(2) affords the employee an opportunity to request, in writing,

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a hearing before an impartial hearing examiner under IC 20-17-5.

Sec. 3. A request for a hearing under IC 20-17-5 must be made by an employee before the effective date of the discharge. If the employee fails to request the hearing, the employee is considered discharged on the effective date of the employer's written notice.

Sec. 4. If an employee requests a hearing under IC 20-17-5, the employer may suspend the employee with pay upon the effective date of discharge, pending the determination of the hearing examiner.

Sec. 5. The employer may, without notice, suspend with pay an employee pending discharge if:

- (1) the employer reasonably believes the nature of the employee's misconduct warrants immediate suspension; or
- (2) the suspension is for just cause as enumerated in IC 20-17-1-6(9) through IC 20-17-1-6(10).

In this case, the employer shall afford to the employee, after the suspension, the formal procedures described in section 1(1) of this chapter.

Chapter 5. Hearings

Sec. 1. Upon receipt of a written request by an employee subject to discharge as described in IC 20-17-4-2, the employer shall request the board to appoint a hearing examiner to preside over the hearing.

Sec. 2. A hearing examiner has the following duties:

- (1) To give the notice provided in section 3 of this chapter.
- (2) To schedule the hearing at a specified date, time, and place, with the authority to postpone the date and time or change the place for any good cause.
- (3) To take full charge of the hearing in accordance with IC 4-21.5-3-25 and IC 4-21.5-3-26, subject to this chapter.
- (4) To render a written decision in the matter, including findings of fact and conclusions of law, that is binding on all parties as of the date of the decision and that contains a notice of the right to seek review of the decision before the board.
- (5) To file the original of the hearing examiner's findings, conclusions, and decision, along with the record in the case, with the board.
- (6) To cause a copy of the hearing examiner's findings, conclusions, and decision to be served upon each of the parties.

Sec. 3. The following constitutes the hearing procedures by

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which an employee may be discharged:

(1) The hearing examiner, not more than five (5) days after the hearing examiner's appointment, shall send notice to the parties of the date, time, and location set for the hearing.

(2) The hearing examiner shall conduct the hearing under IC 4-21.5-3-25 and IC 4-21.5-3-26.

Sec. 4. Any party to the hearing who is aggrieved by the decision of the hearing examiner may appeal the decision to the board as follows:

(1) Not more than twenty (20) days after the date the hearing examiner files the hearing examiner's findings, conclusions, and decision, the party aggrieved by the decision may file a petition for review of the hearing examiner's findings, conclusions, and decision. The filing and pendency of a petition for review shall operate to stay the effectiveness of the decision unless otherwise ordered by the board.

(2) The petition for review must be in writing and be filed with the board. At the same time, a copy of the petition for review must also be filed with the opposing party. The petition must specifically set forth the reasons for the objections of the aggrieved party to the decision of the hearing examiner.

(3) Not more than ten (10) days after the date on which the petition for review is filed with the board, any party to the proceeding before the hearing officer may file a reply to the petition for review on the board, with simultaneous service upon the opposing party. The reply must specifically set forth the party's reply to the objections of the aggrieved party to the decision of the hearing examiner.

(4) Not more than fifteen (15) days after the filing of a reply to the petition for review, if any, the board shall render a final decision consisting of the board's findings of fact, conclusions of law, and final order in the matter.

(5) A party to the board's final decision may seek judicial review under IC 4-21.5-5.

Sec. 5. The board may enforce the board's orders and to take other appropriate action, including reinstating an employee with back pay.

Chapter 6. Construction

Sec. 1. This article may not be construed to limit the application of an agreement negotiated between an employer and the recognized representative of employees with a particular employer.

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